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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 324

GENERAL MOTORS CORPORATION, FRIGIDAIRE DIVISION,
Petitioner,

v.

THE UNITED STATES, *Respondent.*

REPLY MEMORANDUM

Respondent's position is grounded on the misstatement that "[w]hat is involved here is nothing more than the customary warranty that a product will remain free from defects in material and workmanship for a designated period."

The findings of fact, which are quoted below and which are not contested by the respondent, clearly establish that petitioner's Protection Plan is a repair contract.

The Protection Plan

> "is an agreement by the plaintiff to repair or replace the refrigerating unit (or, in plaintiff's

parlance, the 'sealed unit') in one of plaintiff's products if the unit becomes inoperative within a prescribed period." (Finding 24, Pet. App. p. 14a).

Petitioner's purpose in selling the Protection Plan

"was to make better repair service available to all users of its products at a reduced charge." (Finding 27, Pet. App. p. 16a).

In substantially all cases

"the service required on the sealed units of the plaintiff's refrigerators, after the expiration of the One-Year Warranty, is attributable to certain types of wear and tear in the use of the product or to other factors beyond the control of both the plaintiff and the user of the product, such as operation of the unit under low voltage." (Finding 61, Pet. App. p. 31a).

Petitioner has

"never considered that its obligation as a manufacturer to provide products free from defects in workmanship and material or other manufacturing errors extends beyond the period covered by its One-Year Warranty." (Finding 63, Pet. App. p. 31a).

Thus the Protection Plan

"constitutes an additional obligation assumed by the plaintiff at the time of the sale of the product to which it applies, which requires plaintiff to perform repair service on such product after the first year of usage through the fifth year of usage, and the obligation thus assumed is, and has been for many years, a general practice in the industry under similar circumstances." (Finding 64, Pet. App. p. 31a).

The question presented, therefore, does *not* involve a warranty that a product is free from manufacturing defects. Rather the question is whether a charge made for "the additional obligation . . . to perform repair service" is subject to the excise levied upon the sale of manufactured products because provision for such repair service has become "a general practice in the industry."

Respectfully submitted,

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